IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BOROUGH OF SOUTH WILLIAMSPORT, Plaintiff	:	No. 20-00539
vs.	:	CIVIL ACTION – LAW
PRO-VISION, INC., Defendant	:	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

AND NOW, this 19th day of July 2022, the Court hereby enters the following Findings of Fact and Conclusions of Law in support of its Verdict entered April 26, 2022.[1]

FINDINGS OF FACT

1. Plaintiff entered into a written contract with Defendant to purchase four cameras from Defendant in November 2018, each of which was subject to a five-year hardware warranty.

2. Plaintiff hired Keystone Communications, a third party, to install the cameras beginning on December 6, 2018.

3. Shortly after installation, Plaintiff experienced issues with multiple cameras intermittently ceasing to operate.

4. Plaintiff notified Defendant of these issues within a few weeks of their appearance, and in February 2019 Joseph Francis – a sales manager

[1] The verdict was filed of record on April 29, 2022.

employed by Defendant – physically travelled to Plaintiff's headquarters.

5. Francis communicated remotely with Defendant's Director of Engineering Matt Lenner, and Francis, Police Chief Carl Finnerty, and Keystone Communications technician Allen McKinley resolved the problems and confirmed the cameras were working.

6. Shortly after Francis's visit, the cameras began intermittently failing again.

7. In late February 2019, Chief Finnerty wrote a letter to Defendant informing them that issues had reoccurred.

8. On May 17, 2019, Robert Tolemy, an installation technician employed by Defendant, traveled to Plaintiff's headquarters and replaced components on two of the cameras.

9. Before he left, Tolemy confirmed that each camera was working,[2] and Chief Finnerty signed paperwork indicating as much.

[2] Defendant's Exhibit 2 consisted of test videos showing that each of the four cameras when Tolemy left Plaintiff's headquarters on May 17, 2019. In lieu of playing the videos, Plaintiff stipulated that they "show... that the camera systems [were] fully functional and working" after Tolemy had worked on them.

10. Within a few days of Tolemy's visit, Plaintiff noticed multiple cameras once again experiencing intermittent issues and failing to record.

11. Plaintiff did not inform Defendant of these new issues until they filed a Complaint on May 14, 2020.

12. The Complaint stated, in relevant part:

> "[W]ithin days [of the installation of the cameras] they developed defects in each of the units. The Plaintiff notified the Defendant of the issues with the camera systems and the Defendant replaced some hardware on the units. After the repairs were made by the Defendant, the units continued to have operational issues.... Plaintiff continued to attempt [to] resolve the issues until January 30, 2019, when the Plaintiff determined that the issues with the defective cameras could not be repaired. The failure of the Defendant to provide operational cameras is a material breach in the contract between the parties."

13. Upon receipt of the Complaint in late May 2020, over a year after Tolemy's visit, Defendant's President Michael Finn was confused about the basis of the lawsuit, as he believed the issues had been resolved in May 2019.

14. After receiving the Complaint, Defendant began defending the lawsuit and did not offer to repair the cameras.

CONCLUSIONS OF LAW

1. The parties and the Court agree that this dispute is governed by the Uniform Commercial Code.[3]

2. Under UCC § 2607(c)(1), "[w]here a tender has been accepted... the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy...." A party "notifies" another "by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.[4] A party has "notice" of a fact when it "(1) has actual knowledge of it; (2) has received a notice or notification of it; or (3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists."[5]

3. By definition, the Complaint constituted notice of the alleged breach, because it notified Defendant of the alleged breach (the reoccurring failure of the cameras). Therefore, the dispositive question is whether Plaintiff provided notice "within a reasonable time after [Plaintiff] discover[ed]" the alleged breach.

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[3] The "UCC," Title 13 of the Pennsylvania Consolidated Statutes.
[4] UCC § 1202(d).
[5] UCC § 1202(a).

4. "Whether a time for taking an action required by [the UCC] is reasonable depends on the nature, purpose and circumstances of the action."[6] The issue of whether a buyer provided notice of a breach within a reasonable time is a question for the factfinder, who should consider the parties' "normal business practice" and whether the breach was readily discoverable or required "microscopic examination" to detect.[7]

5. Here, the Court finds that Plaintiff did not notify Defendant of the alleged breach within a reasonable time. In December 2018 or January 2019, and again in February 2019, Plaintiff noticed intermittent issues with the cameras and informed Defendant of these issues within – at most – a couple of weeks. On each of these two occasions, Plaintiff and Defendant communicated frequently, and Defendant sent an employee to attempt to remedy the problem. At the conclusion of Tolemy's visit on May 17, 2019, Chief Finnerty signed documents indicating that the cameras were now functioning. A few days later, Plaintiff once again noticed the same immediately noticeable issues reoccurring with the cameras. Unlike the previous two instances, however, Plaintiff did not inform Defendant of the issues within days or weeks; rather, Plaintiff's first communication with Defendant concerning

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[6] UCC § 1205(a).
[7] *Rad Services, Inc. v. American Refining Group, Inc.*, 479 A.2d 565, 567 (Pa. Super. 1984); *Q. Vandenberg and Sons, N.V. v. Siter*, 204 A.2d 494, 498 (Pa. Super. 1964).

the reoccurrence of the breach was the Complaint. Plaintiff filed the Complaint on May 14, 2020, just shy of one year after it discovered that the breach had not been remedied, and Defendant received the Complaint in late May 2020, around or over one year after Plaintiff discovered the reoccurrence of the breach. Finn testified credibly that based on Defendant's last communications with Plaintiff on May 17, 2019 he and Defendant believed that the problems had been resolved and they were not in breach. In light of the fact that Plaintiff had informed Defendant of previous issues within days or weeks, Defendant was justified in believing that it had cured any breach. This is especially true given that Chief Finnerty signed paperwork on behalf of Plaintiff indicating that Defendant had completed the requested work, the test videos showed that the cameras were working, and the breach had been resolved, all which gave Defendant the impression that it was not in breach of the contract between the parties. Plaintiff learned mere days later that this impression it had given Defendant by signing the paperwork was false, yet Plaintiff waited over eleven months to correct this false impression by filing the Complaint. Under the circumstances, this delay was not reasonable, and thus the Complaint did not provide Defendant with notice of the alleged breach within a reasonable time.

6. Contrary to Plaintiff's argument, Defendant's decision to immediately defend the lawsuit upon receipt of the Complaint rather than "notif[ying]

the Plaintiff that they wanted to cure the defect" does not render the yearlong delay reasonable when it would otherwise not be. First, the Complaint states that "Plaintiff determined that the issues with the defective cameras could not be repaired." Based on this verified pleading, Defendant would have been justified in concluding that an offer to cure the defect would be futile; Plaintiff cannot simultaneously insist that damage cannot be repaired while demanding that Defendant attempt or offer to repair that damage. Second, Defendant – a foreign corporation – had strict timelines within which to respond to the Complaint in conformity with the Rules of Civil Procedure or risk having judgment entered against it. It is understandable – and certainly not blameworthy – for Defendant to not offer to rectify the breach when Plaintiff's notice of the breach was adversarial rather than amicable. Finally, Plaintiff cites no legal support for its contention that Defendant was required to offer to remedy the breach.

7. Because Plaintiff did not notify Defendant of the breach "within a reasonable time," Plaintiff is "barred from any remedy" under § 2607(c)(1) of the UCC.

CONCLUSION

In accordance with the foregoing findings of fact and conclusions of law, the Court finds that Plaintiff's May 14, 2020 Complaint provided Defendant with notice of

the alleged breach under the UCC but did not do so within a reasonable timeframe. Therefore, Plaintiff is barred from any recovery under § 2607(c)(1) of the UCC. It is for this reason that the Court entered its April 26, 2022 Verdict in favor of Defendant.

IT IS SO ORDERED this 19th day of July 2022.

By the Court,

Dudley N. Anderson, Senior Judge

cc: Joseph Orso, Esq.
Brandon Griest, Esq.
Gary Weber, Esq. (Lycoming Reporter)